

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

Docket No. **FIFRA-08-2003-0012**

In the Matter of:	)	
	)	
David Petrocco Farms, Inc.	)	<b>PENALTY COMPLAINT AND NOTICE OF</b>
14110 Brighton Rd.	)	<b>OPPORTUNITY FOR HEARING</b>
Brighton, Colorado 80601,	)	
	)	
Respondent	)	

**INTRODUCTION (JURISDICTION)**

1. This civil administrative enforcement action is authorized by Congress in section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. section 136l(a). The rules for this proceeding are the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (“Rules of Practice”),” 40 C.F.R. part 22, a copy of which is enclosed.
2. The undersigned EPA officials have been properly delegated the authority to issue this action.
3. EPA alleges that Respondent has violated FIFRA by using registered pesticides in a manner inconsistent with their labels, and proposes the assessment of a civil penalty, as more fully explained below. FIFRA authorizes the assessment of a civil penalty for violations of the Act. 7 U.S.C. section 136l(a).

**NOTICE OF OPPORTUNITY FOR A HEARING**

4. Respondent has the right to a public hearing before an administrative law judge (ALJ) to disagree with (1) any fact stated (alleged) by EPA in the complaint, or (2) the appropriateness of the proposed penalty.
5. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (999 18<sup>th</sup> St; Suite 300; Denver, Colorado 80202) within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer.  
**FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS**

**MAY WAIVE RESPONDENT’S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**

**QUICK RESOLUTION**

6. Respondent may resolve this proceeding at any time by paying the specific penalty (\$231,990) proposed in the complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint. Such payment constitutes a waiver of respondent’s right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. This payment shall be made by remitting a cashier’s or certified check for that amount, payable to “Treasurer, United States of America,” to:

U. S. EPA, Region 8  
(Regional Hearing Clerk)  
Mellon Bank  
P. O. Box 360859M  
Pittsburgh, PA 15251

**SETTLEMENT NEGOTIATIONS**

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Eduardo Quintana at 1-800- 227-8917; extension 6924 or the address below. ***Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.***

**GENERAL ALLEGATIONS**

The following general allegations apply to each count of this complaint:

8. Respondent, David Petrocco Farms, Inc., is incorporated in the State of Colorado.
9. Respondent is a “person” within the meaning of section 2(s) of FIFRA, and therefore subject to the requirements of the statute and/or regulations.
10. Respondent operates a farm located at 14110 Brighton Road, Brighton, Colorado and grows various vegetables and fruits.
11. Respondent hires workers to perform activities related to the production of crops.

12. Respondent is an “agricultural employer” within the meaning of 40 C.F.R. section 170.3.

13. Respondent is a “private applicator” within the meaning of section 2(e)(2) of FIFRA.

14. FIFRA section 12(a)(2)(G) prohibits the use of registered pesticides in a manner inconsistent with its labeling.

15. An authorized EPA employee visited Respondent’s farm with the consent of Respondent on September 20, 2001, to inspect it for compliance with the statute and regulations.

16. On October 31, 2001, EPA issued a Notice of Warning to Respondent for violating FIFRA by using registered pesticides in a manner inconsistent with its labeling. The violations involved the application of pesticides without complying with several requirements of EPA’s Worker Protection Standard (WPS), authorized by 7 U.S.C. section 136w(a)(1) and found at 40 C.F.R. part 170, which was required to be followed per the label directions.

17. An authorized EPA employee again visited Respondent’s farm with the consent of Respondent on August 8, 2002, to inspect it for compliance with the statute and regulations.

18. During the inspection “workers,” within the meaning of 40 C.F.R. section 170.3, were present at Respondent’s farm.

19. Each of the pesticides described below is a registered pesticide and may only be used in accordance with label directions, including complying with the WPS codified at 40 C.F.R. part 170.:

Ambush, EPA Reg. No. 10182-18;  
Ammo, EPA Reg. No. 379-3027;  
Asana XL, EPA Reg. No. 352-515;  
Avaunt, EPA Reg. No.352-597;  
Confirm, EPA Reg. No. 707-238;  
Di Pel DF, EPA Reg. No. 275-103;  
Dimethoate, EPA Reg. No. 51036-110;  
Disyston, EPA Reg. No. 3125-307;  
Dithane F45, EPA Reg No. 707-156;  
Ecozim (Amvac AZA 3% EC), EPA Reg No. 5481-476;  
Lannate, EPA Reg. No. 352-384;  
Larvin, EPA Reg. No. 264 379;  
Nu Cop, EPA Reg. No. 51036-269;  
Manex, EPA Reg. No. 1812-251;  
Pro Claim, EPA Reg. No. 100-904;

Provado, EPA Reg. No. 3125-457;  
Pyronyl, EPA Reg. No. 655-498;  
Spintor, EPA Reg. No. 62719-294;  
Serenade, EPA Reg. No. 69592-7;  
Sevin XLR, EPA Reg No. 264-333;  
Thiodan, EPA Reg No. 279-2924;  
Warrior T, EPA Reg. No. 10182-18;

20. The WPS requires employers to display specific information about applications of pesticides if the workers are at the farm within 30 days of the application. 40 C.F.R. section 170.122.

21. Each failure to follow the WPS requirements described in the counts below constitutes a use of a registered pesticide in a manner inconsistent with its labeling and each is a violation of FIFRA section 12(a)(2)(G).

22. Each failure to follow other label requirements described in the counts below constitutes a use of a registered pesticide in a manner inconsistent with its labeling and each is a violation of FIFRA section 12(a)(2)(G).

#### **COUNTS 1 & 2**

23. On July 12, 2002, Respondent applied two pesticides called Ambush and Dimethoate on a “greens” field, located in “Farm 2.”

24. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 12<sup>th</sup> application of Ambush (Count 1) and Dimethoate (Count 2).

25. Since Respondent failed to display specific information about the July 12<sup>th</sup> application of the pesticides Ambush and Dimethoate on this greens field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 3-7**

26. On July 13, 2002, Respondent applied five pesticides called Dithane, Nu Cop, Serenade, Ammo, and Sevin XLR on an onion field, located in “Farm 3.”

27. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 13<sup>th</sup> application of Dithane (Count 3), Nu Cop (Count 4), Serenade (Count 5), Ammo (Count 6), and Sevin XLR (Count7).

28. Since Respondent failed to display specific information about the July 13<sup>th</sup> application of the pesticides Dithane, Nu Cop, Serenade, Ammo, and Sevin XLR on this onion field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are five violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 8-11**

29. On July 13, 2002, Respondent applied four pesticides called Nu Cop, Serenade, Dimethoate, and Lannate on a lettuce field, located in "Farm 5."

30. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 13<sup>th</sup> application of Nu Cop (Count 8), Serenade (Count 9), Dimethoate (Count 10), and Lannate (Count 11).

31. Since Respondent failed to display specific information about the July 13<sup>th</sup> application of the pesticides Nu Cop, Serenade, Dimethoate, and Lannate on this lettuce field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 12-16**

32. On July 15, 2002, Respondent applied five pesticides called Lannate, Nu Cop, Serenade, Dimethoate, and Manex on a lettuce field, located in "Farm 5."

33. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 15<sup>th</sup> application of Lannate (Count 12), Nu Cop (Count 13), Serenade (Count 14), Dimethoate (Count 15), and Manex (Count 16).

34. Since Respondent failed to display specific information about the July 15<sup>th</sup> application of the pesticides Lannate, Nu Cop, Serenade, Dimethoate, and Manex on this lettuce field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are five violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 17-19**

35. On July 15, 2002, Respondent applied two pesticides called Dimethoate and Dithane F45 on a cabbage field, located in "Farm 4."

36. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 15<sup>th</sup> application of Dimethoate (Count 17) and Dithane F45 (Count 18).

37. Since Respondent failed to display specific information about the July 15<sup>th</sup> application of the pesticides Dimethoate and Dithane F45 on this cabbage field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

38. The label for Dithane F45 identifies the type of crops on which this pesticide can be used.

39. Cabbage is not listed in the Dithane F45 label as one of the crops for Dithane F45 use.

40. Since Respondent used Dithane F45 on the cabbage crop (Count 19), this failure to comply with label directions constitutes a use of a registered pesticide in a manner inconsistent with its labeling. This is one violation of FIFRA section 12(a)(2)(G).

#### **COUNTS 20-23**

41. On July 16, 2002, Respondent applied four pesticides called Dithane F45, Nu Cop, Serenade, and Ammo on an onion field, located in "Farm 5."

42. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 16<sup>th</sup> application of Dithane F45 (Count 20), Nu Cop (Count 21), Serenade (Count 22), and Ammo (Count 23).

43. Since Respondent failed to display specific information about the July 16<sup>th</sup> application of the pesticides Dithane F45, Nu Cop, Serenade, and Ammo on this onion field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 24-28**

44. On July 16, 2002, Respondent applied five pesticides called Lannate, Nu Cop, Serenade, Dimethoate, and Manex on a lettuce field, located in "Farm 5."

45. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 16<sup>th</sup> application of Lannate (Count 24), Nu Cop (Count 25), Serenade (Count 26), Dimethoate (Count 27), and Manex (Count 28).

46. Since Respondent failed to display specific information about the July 16<sup>th</sup> application of the pesticides Lannate, Nu Cop, Serenade, Dimethoate, and Manex on this lettuce field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide

in a manner inconsistent with its labeling. These are five violations of FIFRA section 12(a)(2)(G).

### **COUNTS 29 & 30**

47. On July 16, 2002, Respondent applied two pesticides called Dimethoate and Ambush on a “greens” field, located in “Farm 3.”

48. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 16<sup>th</sup> application of Dimethoate (Count 29) and Ambush (Count 30).

49. Since Respondent failed to display specific information about the July 16<sup>th</sup> application of the pesticides Dimethoate and Ambush on this greens field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

### **COUNTS 31-34**

50. On July 17, 2002, Respondent applied four pesticides called Dithane F45, Nu Cop, Serenade, and Ammo on an onion field, located in “Farm 4.”

51. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 17<sup>th</sup> application of Dithane F45 (Count 31), Nu Cop (Count 32), Serenade (Count 33), and Ammo (Count 34).

52. Since Respondent failed to display specific information about the July 17<sup>th</sup> application of the pesticides Dithane F45, Nu Cop, Serenade, and Ammo on this onion field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

### **COUNTS 35-38**

53. On July 17, 2002, Respondent applied four pesticides called Lannate, Dithane F45, Nu Cop, and Serenade on an onion field, located in “Farm 3.”

54. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 17<sup>th</sup> application of Lannate (Count 35), Dithane F45 (Count 36), Nu Cop (Count 37), and Serenade (Count 38).

55. Since Respondent failed to display specific information about the July 17<sup>th</sup> application of the pesticides Lannate, Dithane F45, Nu Cop, and Serenade on this onion field,

each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 39-41**

56. On July 17, 2002, Respondent applied three pesticides called Lannate, Ambush, and Pyronyl, or in the alternative, Provado, on a “greens” field, located in “Farm 2.”

57. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 17<sup>th</sup> application of Lannate (Count 39), Ambush (Count 40), and Pyronyl (Count 41), or in the alternative, Provado (also Count 41) .

58. Since Respondent failed to display specific information about the July 17<sup>th</sup> application of the pesticides Lannate, Ambush, and Pyronyl, or in the alternative, Provado on this greens field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are three violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 42-46**

59. On July 17, 2002, Respondent applied five pesticides called Lannate, Nu Cop, Dimethoate, Serenade, and Manex on a lettuce field, located in “Farm 5.”

60. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 17<sup>th</sup> application of Lannate (Count 42), Nu Cop (Count 43), Dimethoate (Count 44), Serenade (Count 45), and Manex (Count 46).

61. Since Respondent failed to display specific information about the July 17<sup>th</sup> application of the pesticides Lannate, Nu Cop, Dimethoate, Serenade, and Manex on this lettuce field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are five violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 47-50**

62. On July 18, 2002, Respondent applied four pesticides called Thiodan, Di Pel DF, Asana XL, and Sevin XLR on a cabbage field, located in “Farm 5.”

63. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 18<sup>th</sup> application of Thiodan (Count 47), Di Pel DF (Count 48), Asana XL (Count 49), and Sevin XLR (Count 50).

64. Since Respondent failed to display specific information about the July 18<sup>th</sup> application of the pesticides Thiodan, Di Pel DF, Asana XL, and Sevin XLR on this cabbage field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 51-55**

65. On July 18, 2002, Respondent applied five pesticides called Thiodan, Asana XL, Confirm, Spintor, and Sevin XLR on a cabbage field, located in "Farm 1."

66. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 18<sup>th</sup> application of Thiodan (Count 51), Asana XL (Count 52), Confirm (Count 53), Spintor (Count 54), and Sevin XLR (Count 55).

67. Since Respondent failed to display specific information about the July 18<sup>th</sup> application of the pesticides Thiodan, Asana XL, Confirm, Spintor, and Sevin XLR on this cabbage field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are five violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 56 & 57**

68. On July 18, 2002, Respondent applied two pesticides called Disyston and Dimethoate on a cabbage field, located in "Farm 3."

69. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 18<sup>th</sup> application of Disyston (Count 56) and Dimethoate (Count 57).

70. Since Respondent failed to display specific information about the July 18<sup>th</sup> application of the pesticides Disyston and Dimethoate on this cabbage field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 58-60**

71. On July 18, 2002, Respondent applied three pesticides called Nu Cop, Lannate, and Dimethoate on a lettuce field, located in "Farm 3."

72. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 18<sup>th</sup> application of Nu Cop (Count 58), Lannate (Count 59), and Dimethoate (Count 60).

73. Since Respondent failed to display specific information about the July 18<sup>th</sup> application of the pesticides Nu Cop, Lannate, and Dimethoate on this lettuce field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a inconsistent with its labeling. These are three violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 61-63**

74. On July 19, 2002, Respondent applied three pesticides called Confirm, Warrior T, and Thiodan on a cabbage field, located in “Farm 3.”

75. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 19<sup>th</sup> application of Confirm (Count 61), Warrior T (Count 62), and Thiodan (Count 63).

76. Since Respondent failed to display specific information about the July 19<sup>th</sup> application of the pesticides Confirm, Warrior T, and Thiodan on this cabbage field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are three violations of FIFRA section 12(a)(2)(G).

#### **COUNT 64**

77. On July 19, 2002, Respondent applied one pesticide called Ambush on a “kale greens” field, located in “Farm 2.”

78. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 19<sup>th</sup> application of Ambush.

79. Since Respondent failed to display specific information about the July 19<sup>th</sup> application of the pesticide Ambush on this kale greens field, this failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. This is one violation of FIFRA section 12(a)(2)(G).

#### **COUNTS 65 & 66**

80. On July 19, 2002, Respondent applied two pesticides called Ambush and Dimethoate on a “greens” field, located in “Farm 2.”

81. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 19<sup>th</sup> application of Ambush (Count 65) and Dimethoate (Count 66).

82. Since Respondent failed to display specific information about the July 19<sup>th</sup> application of the pesticides Ambush and Dimethoate on this greens field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 67 & 68**

83. On July 19, 2002, Respondent applied two pesticides called Ambush and Dimethoate on a “greens” field, located in “Farm 3.”

84. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 19<sup>th</sup> application of Ambush (Count 67) and Dimethoate (Count 68).

85. Since Respondent failed to display specific information about the July 19<sup>th</sup> application of the pesticides Ambush and Dimethoate on this greens field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 69-72**

86. On July 20, 2002, Respondent applied four pesticides called Ammo, Lannate, Di Pel DF, and Sevin XLR on a cabbage field, located in “Farm 3.”

87. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 20<sup>th</sup> application of Ammo (Count 69), Lannate (Count 70), Di Pel DF (Count 71), and Sevin XLR (Count 72).

88. Since Respondent failed to display specific information about the July 20<sup>th</sup> application of the pesticides Ammo, Lannate, Di Pel DF, and Sevin XLR on this cabbage field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 73-76**

89. On July 20, 2002, Respondent applied four pesticides called Nu Cop, Dithane F45, Lannate, and Serenade on an onion field, located in “Farm 3.”

90. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 20<sup>th</sup> application of Nu Cop (Count 73), Dithane F45 (Count 74), Lannate (Count 75), and Serenade (Count 76).

91. Since Respondent failed to display specific information about the July 20<sup>th</sup> application of the pesticides Nu Cop, Dithane F45, Lannate, and Serenade on this onion field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 77-79**

92. On July 20, 2002, Respondent applied three pesticides called Nu Cop, Ambush, and Lannate on a chile field, located in "Farm 3."

93. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 20<sup>th</sup> application of Nu Cop (Count 77), Ambush (Count 78), and Lannate (Count 79).

94. Since Respondent failed to display specific information about the July 20<sup>th</sup> application of the pesticides Nu Cop, Ambush, and Lannate on this chile field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are three violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 80-83**

95. On July 20, 2002, Respondent applied four pesticides called Manex, Nu Cop, Lannate, and Dimethoate on a lettuce field, located in "Farm 3."

96. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 20<sup>th</sup> application of Manex (Count 80), Nu Cop (Count 81), Lannate (Count 82), and Dimethoate (Count 83).

97. Since Respondent failed to display specific information about the July 20<sup>th</sup> application of the pesticides Manex, Nu Cop, Lannate, and Dimethoate on this lettuce field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 84-87**

98. On July 22, 2002, Respondent applied four pesticides called Dithane F45, Nu Cop, Serenade, and Sevin XLR on an onion field, located in "Farm 3."

99. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 22<sup>nd</sup> application of Dithane F45 (Count 84), Nu Cop (Count 85), Serenade (Count 86), and Sevin XLR (Count 87).

100. Since Respondent failed to display specific information about the July 22<sup>nd</sup> application of the pesticides Dithane F45, Nu Cop, Serenade, and Sevin XLR on this onion field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 88-91**

101. On July 22, 2002, Respondent applied three pesticides called Disyston, Dimethoate, and Asana XL on a cabbage field, located in "Farm 3."

102. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 22<sup>nd</sup> application of Disyston (Count 88), Dimethoate (Count 89), and Asana XL (Count 90).

103. Since Respondent failed to display specific information about the July 22<sup>nd</sup> application of the pesticides Disyston, Dimethoate, and Asana XL on this cabbage field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are three violations of FIFRA section 12(a)(2)(G).

104. The label for Asana XL identifies the maximum allowable application ratio for a cabbage crop as 9.6 ounces per acre.

105. On July 22<sup>nd</sup>, Respondent applied Asana XL to this cabbage field at a rate of 32 ounces per acre (Count 91).

106. Since Respondent applied Asana XL to a cabbage crop at a rate higher than the rate specified in the label, this failure to comply with label directions constitutes a use of a registered pesticide in a manner inconsistent with its labeling. This is one violation of FIFRA section 12(a)(2)(G).

#### **COUNTS 92-95**

107. On July 23, 2002, Respondent applied four pesticides called Dithane F45, Nu Cop, Serenade, and Lannate on an onion field, located in "Farm 5."

108. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 23<sup>rd</sup> application of Dithane F45 (Count 92), Nu Cop (Count 93), Serenade (Count 94), and Lannate (Count 95).

109. Since Respondent failed to display specific information about the July 23<sup>rd</sup> application of the pesticides Dithane F45, Nu Cop, Serenade, and Lannate on this onion field,

each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

### **COUNTS 96 & 97**

110. On July 23, 2002, Respondent applied two pesticides called Ambush and Dimethoate on a “greens” field, located in “Farm 3.”

111. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 23<sup>rd</sup> application of Ambush (Count 96) and Dimethoate (Count 97).

112. Since Respondent failed to display specific information about the July 23<sup>rd</sup> application of the pesticides Ambush and Dimethoate on this greens field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

### **COUNTS 98-102**

113. On July 24, 2002, Respondent applied four pesticides called Lannate, Dimethoate, Di Pel DF, and Asana XL on a cabbage field, located in “Farm 1.”

114. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 24<sup>th</sup> application of Lannate (Count 98), Dimethoate (Count 99), Di Pel DF (Count 100), and Asana XL (Count 101).

115. Since Respondent failed to display specific information about the July 24<sup>th</sup> application of the pesticides Lannate, Dimethoate, Di Pel DF, and Asana XL on this cabbage field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

116. The label for Asana XL identifies the maximum allowable application ratio for a cabbage crop as 9.6 ounces per acre.

117. On July 24<sup>th</sup>, Respondent applied Asana XL to this cabbage field at a rate of 32 ounces per acre (Count 102).

118. Since Respondent applied Asana XL to a cabbage crop at a rate higher than the rate specified in the label, this failure to comply with label directions constitutes a use of a registered pesticide in a manner inconsistent with its labeling. This is one violation of FIFRA section 12(a)(2)(G).

### **COUNTS 103-106**

119. On July 24, 2002, Respondent applied four pesticides called Dithane F45, Nu Cop, Lannate, and Serenade on an onion field, located in “Farm 4.”

120. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 24<sup>th</sup> application of Dithane F45 (Count 103), Nu Cop (Count 104), Lannate (Count 105), and Serenade (Count 106).

121. Since Respondent failed to display specific information about the July 24<sup>th</sup> application of the pesticides Dithane F45, Nu Cop, Lannate, and Serenade on this onion field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 107-109**

122. On July 24, 2002, Respondent applied three pesticides called Warrior T, Thiodan, and Larvin on a cabbage field or in the alternative an onion field, located in “Farm 4.”

123. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 24<sup>th</sup> application of Warrior T (Count 107), Thiodan (Count 108), and Larvin (Count 109).

124. Since Respondent failed to display specific information about the July 24<sup>th</sup> application of the pesticides Warrior T, Thiodan, and Larvin on this cabbage field or in the alternative the onion field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are three violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 110-114**

125. On July 24, 2002, Respondent applied five pesticides called Warrior T, Thiodan, Asana XL, Larvin, and Dimethoate on a cabbage field, located in “Farm 3.”

126. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 24<sup>th</sup> application of Warrior T (Count 110), Thiodan (Count 111), Asana XL (Count 112), Larvin (Count 113), and Dimethoate (Count 114).

127. Since Respondent failed to display specific information about the July 24<sup>th</sup> application of the pesticides Warrior T, Thiodan, Asana XL, Larvin, and Dimethoate on this cabbage field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are five violations of FIFRA section 12(a)(2)(G).

### **COUNTS 115-117**

128. On July 24, 2002, Respondent applied three pesticides called Lannate, Nu Cop, and Dimethoate on a lettuce field, located in “Farm 3.”

129. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 24<sup>th</sup> application of Lannate (Count 115), Nu Cop (Count 116), and Dimethoate (Count 117).

130. Since Respondent failed to display specific information about the July 24<sup>th</sup> application of the pesticides Lannate, Nu Cop, and Dimethoate on this lettuce field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are three violations of FIFRA section 12(a)(2)(G).

### **COUNTS 118-121**

131. On July 25, 2002, Respondent applied four pesticides called Warrior T, Dimethoate, Larvin, and Lannate on a cabbage field, located in “Farm 5.”

132. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 25<sup>th</sup> application of Warrior T (Count 118), Dimethoate (Count 119), Larvin (Count 120), and Lannate (Count 121).

133. Since Respondent failed to display specific information about the July 25<sup>th</sup> application of the pesticides Warrior T, Dimethoate, Larvin, and Lannate on this cabbage field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

### **COUNTS 122-125**

134. On July 25, 2002, Respondent applied four pesticides called Serenade, Dimethoate, Lannate, and Nu Cop on a lettuce field, located in “Farm 3.”

135. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 25<sup>th</sup> application of Serenade (Count 122), Dimethoate (Count 123), Lannate (Count 124), and Nu Cop (Count 125).

136. Since Respondent failed to display specific information about the July 25<sup>th</sup> application of the pesticides Serenade, Dimethoate, Lannate, and Nu Cop on this lettuce field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

### **COUNTS 126-129**

137. On July 26, 2002, Respondent applied four pesticides called Nu Cop, Dithane F45, Lannate, and Serenade on an onion field, located in “Farm 4.”

138. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 26<sup>th</sup> application of Nu Cop (Count 126), Dithane F45 (Count 127), Lannate (Count 128), and Serenade (Count 129).

139. Since Respondent failed to display specific information about the July 26<sup>th</sup> application of the pesticides Nu Cop, Dithane F45, Lannate, and Serenade on this onion field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 130-133**

140. On July 26, 2002, Respondent applied four pesticides called Nu Cop, Lannate, Dimethoate, and Serenade on a lettuce field, located in “Farm 5.”

141. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 26<sup>th</sup> application of Nu Cop (Count 130), Lannate (Count 131), Dimethoate (Count 132) and Serenade (Count 133).

142. Since Respondent failed to display specific information about the July 26<sup>th</sup> application of the pesticides Nu Cop, Lannate, Dimethoate, and Serenade on this lettuce field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 134-137**

143. On July 27, 2002, Respondent applied four pesticides called Serenade, Lannate, Nu Cop, and Dimethoate on a lettuce field, located in “Farm 3.”

144. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 27<sup>th</sup> application of Serenade (Count 134), Lannate (Count 135), Nu Cop (Count 136), and Dimethoate (Count 137).

145. Since Respondent failed to display specific information about the July 27<sup>th</sup> application of the pesticides Serenade, Lannate, Nu Cop, and Dimethoate on this lettuce field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 138-142**

146. On July 27, 2002, Respondent applied five pesticides called Nu Cop, Dithane 45, Serenade, Lannate, and Ammo on an onion field, located in "Farm 3."

147. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 27<sup>th</sup> application of Nu Cop (Count 138), Dithane 45 (Count 139), Serenade (Count 140), Lannate (Count 141), and Ammo (Count 142).

148. Since Respondent failed to display specific information about the July 27<sup>th</sup> application of the pesticides Nu Cop, Dithane 45, Serenade, Lannate, and Ammo on this onion field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are five violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 143-147**

149. On July 27, 2002, Respondent applied five pesticides called Nu Cop, Dithane 45, Serenade, Ammo, and Lannate on an onion field, located in "Road 14" or in the alternative "Rancho 14."

150. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 27<sup>th</sup> application of Nu Cop (Count 143), Dithane 45 (Count 144), Serenade (Count 145), Ammo (Count 146), and Lannate (Count 147).

151. Since Respondent failed to display specific information about the July 27<sup>th</sup> application of the pesticides Nu Cop, Dithane 45, Serenade, Ammo, and Lannate on this onion field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are five violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 148 & 149**

152. On July 28, 2002, Respondent applied two pesticides called Larvin and Ambush on a cabbage field, located in "Road 14" or in the alternative "Rancho 14."

153. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 28<sup>th</sup> application of Larvin (Count 148) and Ambush (Count 149).

154. Since Respondent failed to display specific information about the July 28<sup>th</sup> application of the pesticides Larvin and Ambush on this cabbage field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

### **COUNTS 150-153**

155. On July 28, 2002, Respondent applied four pesticides called Dithane F45, Nu Cop, Lannate, and Ammo on a purple onion field, located in "Road 14" or in the alternative "Rancho 14."

156. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 28<sup>th</sup> application of Dithane F45 (Count 150), Nu Cop (Count 151), Lannate (Count 152), and Ammo (Count 153).

157. Since Respondent failed to display specific information about the July 28<sup>th</sup> application of the pesticides Dithane F45, Nu Cop, Lannate, and Ammo on this purple onion field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

### **COUNTS 154 & 155**

158. On July 28, 2002, Respondent applied two pesticides called Ambush and Dimethoate on a "greens" field, located in "Road 14" or in the alternative "Rancho 14."

159. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 28<sup>th</sup> application of Ambush (Count 154) and Dimethoate (Count 155).

160. Since Respondent failed to display specific information about the July 28<sup>th</sup> application of the pesticides Ambush and Dimethoate on this greens field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

### **COUNTS 156 & 157**

161. On July 28, 2002, Respondent applied two pesticides called Ambush and Dimethoate on a "greens" field, located in "Holton" or in the alternative "Cukano."

162. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 28<sup>th</sup> application of Ambush (Count 156) and Dimethoate (Count 157).

163. Since Respondent failed to display specific information about the July 28<sup>th</sup> application of the pesticides Ambush and Dimethoate on this greens field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

### **COUNTS 158-160**

164. On July 29, 2002, Respondent applied three pesticides called Nu Cop, Lannate, and Dimethoate on a lettuce field, located in “Road 14” or in the alternative “Rancho 14.”

165. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 29<sup>th</sup> application of Nu Cop (Count 158), Lannate (Count 159), and Dimethoate (Count 160).

166. Since Respondent failed to display specific information about the July 29<sup>th</sup> application of the pesticides Nu Cop, Lannate, and Dimethoate on this lettuce field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are three violations of FIFRA section 12(a)(2)(G).

### **COUNTS 161-165**

167. On July 29, 2002, Respondent applied five pesticides called Nu Cop, Dithane F45, Serenade, Lannate, and Ammo on an onion field, located in “Farm 5.”

168. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 29<sup>th</sup> application of Nu Cop (Count 161), Dithane F45 (Count 162), Serenade (Count 163), Lannate (Count 164), and Ammo (Count 165).

169. Since Respondent failed to display specific information about the July 29<sup>th</sup> application of the pesticides Nu Cop, Dithane F45, Serenade, Lannate, and Ammo on this onion field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are five violations of FIFRA section 12(a)(2)(G).

### **COUNTS 166 & 167**

170. On July 29, 2002, Respondent applied two pesticides called Ambush and Dimethoate on a “greens” field, located in “Farm 3.”

171. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 29<sup>th</sup> application of Ambush (Count 166) and Dimethoate (Count 167).

172. Since Respondent failed to display specific information about the July 29<sup>th</sup> application of the pesticides Ambush and Dimethoate on this greens field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

### **COUNTS 168-171**

173. On July 30, 2002, Respondent applied four pesticides called Dimethoate, Lannate, Nu Cop, and Serenade on a lettuce field, described in Spanish as “transplant lettuce #1,” located in “Farm 3.”

174. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 30<sup>th</sup> application of Dimethoate (Count 168), Lannate (Count 169), Nu Cop (Count 170), and Serenade (Count 171).

175. Since Respondent failed to display specific information about the July 30<sup>th</sup> application of the pesticides Dimethoate, Lannate, Nu Cop, and Serenade on this lettuce field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

### **COUNTS 172-175**

176. On July 30, 2002, Respondent applied four pesticides called Dimethoate, Lannate, Nu Cop, and Serenade on a lettuce field, described in Spanish as “planted lettuce, near the cows,” located in “Farm 3.”

177. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 30<sup>th</sup> application of Dimethoate (Count 172), Lannate (Count 173), Nu Cop (Count 174), and Serenade (Count 175).

178. Since Respondent failed to display specific information about the July 30<sup>th</sup> application of the pesticides Dimethoate, Lannate, Nu Cop, and Serenade on this lettuce field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

### **COUNTS 176-180**

179. On July 31, 2002, Respondent applied five pesticides called Nu Cop, Dithane F45, Serenade, Lannate, and Ammo on an onion field, located in “Farm 4.”

180. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 31<sup>st</sup> application of Nu Cop (Count 176), Dithane F45 (Count 177), Serenade (Count 178), Lannate (Count 179), and Ammo (Count 180).

181. Since Respondent failed to display specific information about the July 31<sup>st</sup> application of the pesticides Nu Cop, Dithane F45, Serenade, Lannate, and Ammo on this onion field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide

in a manner inconsistent with its labeling. These are five violations of FIFRA section 12(a)(2)(G).

### **COUNTS 181 & 182**

182. On July 31, 2002, Respondent applied two pesticides called Ambush and Spintor on a cabbage field, located in "Farm 3."

183. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the July 31<sup>st</sup> application of Ambush (Count 181) and Spintor (Count 182).

184. Since Respondent failed to display specific information about the July 31<sup>st</sup> application of the pesticides Ambush and Spintor on this cabbage field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

### **COUNTS 183-185**

185. On August 1, 2002, Respondent applied three pesticides called Dimethoate, Ambush and Ecozim on a "greens" field, located in "Farm 3."

186. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the August 1<sup>st</sup> application of Dimethoate (Count 183), Ambush (Count 184), and Ecozim (Count 185).

187. Since Respondent failed to display specific information about the August 1<sup>st</sup> application of the pesticides Dimethoate, Ambush, and Ecozim on this greens field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are three violations of FIFRA section 12(a)(2)(G).

### **COUNTS 186-189**

188. On August 1, 2002, Respondent applied four pesticides called Lannate, Nu Cop, Serenade, and Dimethoate on a lettuce field, located in "Road 14" or in the alternative "Rancho 14."

189. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the August 1<sup>st</sup> application of Lannate (Count 186), Nu Cop (Count 187), Serenade (Count 188), and Dimethoate (Count 189).

190. Since Respondent failed to display specific information about the August 1<sup>st</sup> application of the pesticides Lannate, Nu Cop, Serenade, and Dimethoate on this lettuce field,

each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 190-194**

191. On August 2, 2002, Respondent applied four pesticides called Di Pel DF, Avaunt, Pro Claim, and Asana XL on a cabbage field, located in "Road 10" or in the alternative "Rancho 10."

192. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the August 2<sup>nd</sup> application of Di Pel DF (Count 190), Avaunt (Count 191), Pro Claim (Count 192), and Asana XL (Count 193).

193. Since Respondent failed to display specific information about the August 2<sup>nd</sup> application of the pesticides Di Pel DF, Avaunt, Pro Claim, and Asana XL on this cabbage field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

194. The label for Asana XL identifies the maximum allowable application ratio for a cabbage crop as 9.6 ounces per acre.

195. On August 2<sup>nd</sup>, Respondent applied Asana XL to this cabbage field at a rate of 32 ounces per acre (Count 194).

196. Since Respondent applied Asana XL to a cabbage crop at a rate higher than the rate specified in the label, this failure to comply with label directions constitutes a use of a registered pesticide in a manner inconsistent with its labeling. This is one violation of FIFRA section 12(a)(2)(G).

#### **COUNTS 195-198**

197. On August 2, 2002, Respondent applied four pesticides called Lannate, Nu Cop, Serenade, and Dimethoate on a lettuce field, located in "Road 14" or in the alternative "Rancho 14."

198. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the August 2<sup>nd</sup> application of Lannate (Count 195), Nu Cop (Count 196), Serenade (Count 197), and Dimethoate (Count 198).

199. Since Respondent failed to display specific information about the August 2<sup>nd</sup> application of the pesticides Lannate, Nu Cop, Serenade, and Dimethoate on this lettuce field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

### **COUNTS 199 & 200**

200. On August 2, 2002, Respondent applied two pesticides called Ambush and Dimethoate on a “greens” field, located in “Holton” or in the alternative “Cucuno” or “Cukano.”

201. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the August 2<sup>nd</sup> application of Ambush (Count 199) and Dimethoate (Count 200).

202. Since Respondent failed to display specific information about the August 2<sup>nd</sup> application of the pesticides Ambush and Dimethoate on this greens field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

### **COUNTS 201-203**

203. On August 3, 2002, Respondent applied three pesticides called Ambush, Dimethoate, and Ecozim on a “greens” field, located in “Holton” or in the alternative “Cucuno” or “Cukano.”

204. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the August 3<sup>rd</sup> application of Ambush (Count 201), Dimethoate (Count 202), and Ecozim (Count 203).

205. Since Respondent failed to display specific information about the August 3<sup>rd</sup> application of the pesticides Ambush, Dimethoate, and Ecozim on this greens field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are three violations of FIFRA section 12(a)(2)(G).

### **COUNTS 204-208**

206. On August 3, 2002, Respondent applied five pesticides called Spintor, Asana XL, Dimethoate, Di Pel DF, and Sevin XLR on a cabbage field, located in “Farm 4.”

207. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the August 3<sup>rd</sup> application of Spintor (Count 204), Asana XL (Count 205), Dimethoate (Count 206), Di Pel DF (Count 207), and Sevin XLR (Count 208).

208. Since Respondent failed to display specific information about the August 3<sup>rd</sup> application of the pesticides Spintor, Asana XL, Dimethoate, Di Pel DF, and Sevin XLR on this cabbage field, each failure to comply with the WPS requirement constitutes a use of a registered

pesticide in a manner inconsistent with its labeling. These are five violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 209-212**

209. On August 4, 2002, Respondent applied four pesticides called Di Pel DF, Nu Cop, Ambush, and Ecozim on a lettuce field, located in “Farm 3.”

210. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the August 4<sup>th</sup> application of Di Pel DF (Count 209), Nu Cop (Count 210), Ambush (Count 211), and Ecozim (Count 212).

211. Since Respondent failed to display specific information about the August 4<sup>th</sup> application of the pesticides Di Pel DF, Nu Cop, Ambush, and Ecozim on this lettuce field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 213-216**

212. On August 4, 2002, Respondent applied four pesticides called Warrior T, Thiodan, Di Pel DF, and Sevin XLR on a cabbage field, located in “Farm 3.”

213. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the August 4<sup>th</sup> application of Warrior T (Count 213), Thiodan (Count 214), Di Pel DF (Count 215), and Sevin XLR (Count 216).

214. Since Respondent failed to display specific information about the August 4<sup>th</sup> application of the pesticides Warrior T, Thiodan, Di Pel DF, and Sevin XLR on this cabbage field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 217-219**

215. On August 4, 2002, Respondent applied three pesticides called Ambush, Di Pel DF, and Dimethoate on a cabbage field, located in “Farm 3.”

216. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the August 4<sup>th</sup> application of Ambush (Count 217), Di Pel DF (Count 218), and Dimethoate (Count 219).

217. Since Respondent failed to display specific information about the August 4<sup>th</sup> application of the pesticides Ambush, Di Pel DF, and Dimethoate on this cabbage field, each

failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are three violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 220-223**

218. On August 4, 2002, Respondent applied four pesticides called Ambush, Di Pel DF, Dimethoate and Spintor on a kale and collard greens field, located in “Farm 3.”

219. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the August 4<sup>th</sup> application of Ambush (Count 220), Di Pel DF (Count 221), Dimethoate (Count 222), and Spintor (Count 223).

220. Since Respondent failed to display specific information about the August 4<sup>th</sup> application of the pesticides Ambush, Di Pel DF, Dimethoate and Spintor on this kale and collard greens field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are four violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 224-226**

221. On August 4, 2002, Respondent applied three pesticides called Warrior T, Di Pel DF, and Spintor on a cabbage field, located in “Farm 5.”

222. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the August 4<sup>th</sup> application of Warrior T (Count 224), Di Pel DF (Count 225), and Spintor (Count 226).

223. Since Respondent failed to display specific information about the August 4<sup>th</sup> application of the pesticides Warrior T, Di Pel DF, and Spintor on this cabbage field, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are three violations of FIFRA section 12(a)(2)(G).

#### **COUNTS 227 & 228**

224. On August 4, 2002, Respondent applied two pesticides called Spintor and Ambush on a lettuce field, located in “Farm 5.”

225. On August 8, 2002, Respondent was not displaying specific information, as required by 40 C.F.R. section 170.122, about the August 4<sup>th</sup> application of Spintor (Count 227) and Ambush (Count 228).

226. Since Respondent failed to display specific information about the August 4<sup>th</sup> application of the pesticides Spintor and Ambush on this lettuce field, each failure to comply

with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

### **COUNT 229**

227. On August 10, 2002, Respondent applied one pesticide called Di Pel DF on an onion field, located in “Farm 5.”

228. The label for Di Pel DF identifies the maximum allowable application ratio for a onion crop as 2 pounds per acre.

229. On August 10<sup>th</sup>, Respondent applied Di Pel DF to this onion field at a rate of 3 pounds per acre (Count 229).

230. Since Respondent applied Di Pel DF to a onion crop at a rate higher than the rate specified in the label, this failure to comply with label directions constitutes a use of a registered pesticide in a manner inconsistent with its labeling. This is one violation of FIFRA section 12(a)(2)(G).

### **PROPOSED CIVIL PENALTY**

231. For private applicators, FIFRA authorizes the assessment of a civil penalty of up to \$1,100 for each offense of the Act. FIFRA requires EPA to consider the appropriateness of the penalty to the size of the business, the effect on the person’s ability to continue in business, and the gravity of the violation. EPA has established policies that provide a rational and consistent method for applying statutory factors to the circumstances of specific cases. A narrative description of the reasoning behind the penalty proposed in this case is attached to this complaint, along with copies of the EPA policies. For the FIFRA violations alleged in this complaint, EPA proposes penalties in the range of \$880 to \$1,100 for each count, for a total penalty of \$231,990. The exact penalty amount for each count can be found in Complainant’s Exhibit Number 1.

232. The ALJ is not bound by EPA’s penalty policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the statute. For Two-Hundred and Twenty-Nine violations, the maximum would be \$251,900.



To discuss settlement or ask any questions you may have about this process, please contact Eduardo Quintana, Enforcement Attorney, at 1-800-227-8917; ext. 6924, or at the address below.

United States Environmental Protection Agency  
Region 8, Office of Enforcement, Compliance and  
Environmental Justice, Complainant  
999 18<sup>th</sup> Street, Suite 300 (ENF-L)  
Denver, CO 80202

Date: 5/30/03

By: SIGNED  
Elisabeth Evans, Director  
Technical Enforcement Program

Date: 5/30/03

By: DAVID J. JANIK  
Michael T. Risner, Director  
David J. Janik, Supervisory Enforcement Attorney  
Legal Enforcement Program

Date: 5/29/2003

By: SIGNED  
Eduardo Quintana, Enforcement Attorney  
Legal Enforcement Program

**DOCKET NO.: FIFRA-08-2003-0012**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one copy of the COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits were hand-carried to the Regional Hearing Clerk, EPA Region VIII, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent via Federal Express to:

David Petrocco  
David Petrocco Farms, Inc.  
14110 Brighton Rd.  
Brighton, Colorado 80601

**June 3, 2003** \_\_\_\_\_  
Date

**Judith M. McTernan** \_\_\_\_\_

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON JUNE 3, 2003.**